

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

FILED

JUL 08 2005

IN RE:

Georgetown Steel Company, LLC,

Debtor.

C/A No. 03-13156-W

United States Bankruptcy Court
Columbia, South Carolina (11)

ENTERED

JUL 08 2005

K. E. P.

JUDGMENT

Chapter 11

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, Debtor did not maintain a severance program that required it to provide severance benefits to Ford and Kizer. Thus, the Liquidating Trustee's Motion to Reconsider is granted and the Court concludes that Debtor was not legally obligated to provide severance benefits through a contract implied in fact or contract implied in law. Therefore, Ford's severance claim is disallowed in its entirety and the Court vacates the provisions of the April 6, 2005 Order allowing such a claim and providing administrative priority treatment for Ford's severance claim. Additionally, the Liquidating Trustee's objection to Kizer's severance claim under the Fifth Omnibus Objection is sustained.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina

July 8, 2005

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FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Georgetown Steel Company, LLC,

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C/A No. 03-13156-W

ORDER

Chapter 11

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K. E. P.

This matter comes before the Court upon the Motion to Alter Judgment Regarding Calculation and Payment of Severance Benefit ("Motion to Alter") filed by Joseph Ford ("Ford") and the objection thereto filed by the Liquidating Trustee for Georgetown Steel Company, LLC (the "Debtor"); a Motion to Reconsider filed by the Liquidating Trustee; and the Fifth Omnibus Objection to Claims ("Fifth Omnibus Objection") filed by the Liquidating Trustee, including an objection to claim of Lorenzo A. Kizer ("Kizer"). The pleadings filed relate to severance claims of the type addressed by this Court's Order dated April 6, 2005 (the "April 6, 2005 Order").¹ In light of the pleadings, evidence and arguments presented by the parties, the Court makes the following Findings of Fact and Conclusions of Law.²

¹ The Court entered an Order on May 5, 2005, denying Kizer's Motion to Alter Judgment reconsidering the April 6, 2005 Order. Kizer was not a party to the April 6, 2005 Order. However, inasmuch as Kizer may be similarly situated with respect to his severance claim, and because the Liquidating Trustee objected to Kizer's claim in the Fifth Omnibus Objection to Claims on May 2, 2005, the Court determined that Kizer would be entitled to be heard and present evidence regarding his claim at the same date and time as the hearings set on the above-referenced pleadings. Although Kizer did not file a written response to the Fifth Omnibus Objection, he did appear at the hearing and present arguments similar to that of Ford. Accordingly, the Court will address Kizer's claim and arguments herein.

² To the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are also adopted as such.

PROCEDURAL HISTORY AND FINDINGS OF FACT

1. Debtor is the successor in interest to a steel mill located in Georgetown, South Carolina (the "Steel Mill") formerly owned by Georgetown Steel Company ("GSC").³
2. On January 31, 2005, the Liquidating Trustee for Debtor filed a Fourth Omnibus Objection to Claims ("Fourth Omnibus Objection"). In the Fourth Omnibus Objection, the Liquidating Trustee objected to certain employee claims for severance pay and other benefits.
3. Ford, one of the employees named in the Fourth Omnibus Objection, filed a response in order to assert various claims, which included a claim for severance pay. Ford asserted that Debtor adopted the severance program utilized by GSC, the company that sold Debtor the Steel Mill and related operations. Ford also sought to have his severance claim treated as an administrative priority.
4. The Liquidating Trustee contended that Debtor did not maintain a formal severance policy. Accordingly, the Liquidating Trustee concluded that Debtor did not owe any severance pay to Ford.
5. At a hearing on the matter, Ford testified that at the time of GSC's sale of the Steel Mill to Debtor, Debtor's human resources department advised him and other employees that during the Steel Mill's transition of ownership from GSC to Debtor, there were no major changes in the human resources policies or procedures in place. Ford concluded from meetings held that Debtor adopted GSC's severance program which traditionally provided a laid-off employee with one week of pay for every year of service to the Steel Mill. Ford also pointed to the fact that Debtor provided the employees it laid off in March 2003 with

³ GSC sold the Steel Mill to Debtor during the course of GSC's bankruptcy case in the United States Bankruptcy Court for the Western District of North Carolina.

severance payments equal to one week of pay for every year of service to Debtor and its predecessors in interest. Ford acknowledged that Debtor did not provide severance payments to the employees it laid off in June 2003.

6. George White ("White"), a human resources manager of Debtor, testified that he indeed advised employees that Debtor would continue to provide employee benefits in place during the Steel Mill's transition from GSC to Debtor, but also specifically testified that Debtor did not have a legal obligation to provide severance pay to its employees and did not maintain a formal written severance program.⁴

7. Pete Shelley ("Shelley"), Debtor's former chief executive officer, testified that based upon his knowledge, and according to the books and records of Debtor, Debtor never maintained a severance program and was in no way obligated to provide a severance benefit.

8. In reaching the factual determinations made in the April 6, 2005 Order, the Court relied upon the testimony of White, Shelley and Ford. The testimony of White and Ford clearly established that Debtor held meetings with its employees and that such information was provided at such meetings concerning Debtor's continuation of certain employee benefit programs during the course of its bankruptcy. However, Ford presented no evidence indicating that Debtor's management expressly advised employees that Debtor intended to or chose to continue GSC's severance programs.

9. Based upon the limited evidence developed in the case, the Court issued the April 6, 2005 Order. In the April 6, 2005 Order, the Court found that Debtor maintained a severance program under an implied contract in fact and implied contract in law, dependent in large

⁴ The Court notes that White had filed a claim for severance benefits in the amount of \$100,000.00, apparently based upon an executive letter agreement between White and Debtor. At the hearing held on July 7, 2005 regarding executive employee claims, it was reported to the Court that White has now withdrawn his claim for severance.

part upon the apparent representation made at employee meetings that GSC's benefits would continue.

10. Without sufficient evidence demonstrating the method by which Debtor was required to calculate severance pay, the Court concluded that severance benefits under Debtor's implied severance program were to be calculated by providing one week's pay for every year of an employee's service to Debtor and, since there was no convincing evidence to sustain Ford's position, that an employee's prior years of service to Debtor's predecessor were not to be considered. Furthermore, due to the timing of his termination, the Court recognized Ford's severance claim as an administrative expense.

11. Since the Court's calculation of severance benefits significantly decreased Ford's severance claim, Ford filed the Motion to Alter. In response, the Liquidating Trustee filed an objection to the Motion to Alter and filed its own Motion to Reconsider.

12. During the time between Ford's filing of his Motion to Alter and the subsequent hearing, the Liquidating Trustee filed a Fifth Omnibus Objection. In the Fifth Omnibus Objection, the Liquidating Trustee sought to treat other employee severance claims in the same manner provided by the April 6, 2005 Order. Under the terms of the Fifth Omnibus Objection, the Liquidating Trustee sought to deny Kizer's severance claim in its entirety because he had not worked a sufficient number of years with Debtor to merit allowance of a severance claim under the terms of the April 6, 2005 Order. The Fifth Omnibus Objection also sought disallowance of certain employee claims for severance and vacation pay. The Liquidating Trustee's proposed treatment of the severance claims was largely based upon the treatment of Ford's severance claim under the April 6, 2005 Order.

13. Upon Ford's Motion to Alter and Debtor's cross-motion to reconsider, the Court ordered Ford and the Liquidating Trustee's counsel to produce any further evidence associated with GSC's severance program and its treatment during GSC's bankruptcy and eventual asset sale to Debtor. Pursuant to the order, Ford and the Liquidating Trustee's counsel exchanged certain documents and provided copies to the Court. The parties did not present these documents at the initial hearing on this matter, and the Court was not made aware of the existence of these documents prior to this time. Debtor submitted the following six documents, some of which are pleadings and orders from GSC's bankruptcy case in the United States Bankruptcy Court for the Western District of North Carolina, into evidence:

- a. Motion for Order Authorizing and Approving (I) Payment of Pre-Petition Wages, Salaries, and Employee Benefits, (II) Continuation of Employee Benefits Programs, and (III) Reimbursement of Employee Business Expenses;
- b. Declaration of Mark C. Essig in support of first day motions;
- c. Order Authorizing and Approving (I) Payment of Pre-Petition Wages (II) Continuation of Employee Benefits Programs, and (III) Reimbursement of Employee Business Expenses;
- d. Motion for Orders Pursuant to Sections 105(a), 363, 365, and 1146(c);
- e. Order pursuant to Sections 105(a), 363, 365, and 1146(c) (this document includes the asset purchase agreement between Debtor and GSC); and
- f. Letter from Dan Thorne.

14. Ford also submitted a document from Debtor's management that specifically listed Debtor's treatment of certain employee benefit obligations during the course of Debtor's bankruptcy.

15. Seven employees appeared at the hearing on the Fifth Omnibus Objection to defend against a reduction in their severance claim, and sought priority treatment for their severance claim and allowed vacation claim.

16. The employees present at the hearing were Kizer; Inge Ebert; Wilson H. Ackerman; Dorothy Cameron, who also appeared on behalf of her husband, Terry Cameron; James Gorman; and Roger Smoak. Mr. Smoak also objected to the treatment of an overtime claim that he filed against Debtor.

17. The Liquidating Trustee, these seven employees, and Ford stipulated to the entry of additional documents into the record of this case and that the evidence submitted in the prior hearing should be considered by the Court in the rulings. Ford and the Liquidating Trustee also similarly requested reconsideration of the April 6, 2005 Order's factual findings and legal conclusions with respect to the existence of an implied severance program utilized by Debtor.

18. Following the hearing on the Motions to Alter and the Fifth Omnibus Objection, and according to consent orders submitted by the parties, settlements have been reached between the Liquidating Trustee and Wilson H. Ackerman, Dorothy Cameron, Terry Cameron, Inge Ebert, James Gorman, and Roger Smoak. Thus, only the severance claims and priority treatment of claims asserted by Ford and Kizer remain in dispute.

19. In light of the new documents; the additional proffered testimony of Shelley at the hearing on Ford's Motion to Alter; the existing record of this matter; and Ford and Debtor's similar requests to reconsider severance issues addressed in the April 6, 2005 Order, the Court finds it necessary to vacate the April 6, 2005 Order to the extent that it concerns Debtor's establishment of a severance program and any award of severance pay to Ford.

However, the remainder of the April 6, 2005 Order continues to be valid and effective. Accordingly, the Court shall reconsider all aspects of the April 6, 2005 Order that deal with the existence of an implied severance plan and the treatment of Ford's severance claim.

SUMMARY OF ARGUMENT

Ford and Kizer seek reconsideration of the Court's calculation of severance benefits under the terms of the April 6, 2005 Order. Ford and Kizer contend that Debtor's informal severance program provided one week of pay for every year of an employee's service to Debtor and its predecessor in interest to the Steel Mill, and that they are thus entitled to greater severance pay than that calculated in the April 6, 2005 Order. In response to Ford's Motion to Alter, and by its Motion to Reconsider, the Liquidating Trustee seeks reconsideration of the Court's conclusion that Debtor maintained an informal severance program by implied contract in fact and implied contract in law and that Ford was entitled to an administrative expense claim. The Liquidating Trustee contends that no severance benefits should be awarded.

CONCLUSIONS OF LAW

I. MOTION TO RECONSIDER STANDARDS AND BURDENS OF PROOF⁵

Federal Rule of Civil Procedure 60 ("Rule 60"), Relief from Judgment or Order, is applicable to bankruptcy matters pursuant to Federal Rule of Bankruptcy Procedure 9024. Under Rule 60, first, the moving party has the burden to prove the following: (1) it timely filed the Rule 60(b) motion; (2) the non-moving party will not be unfairly prejudiced by setting aside the judgment; and (3) it has a meritorious defense. In re Crawford, C/A No. 02-01266-W, slip op. at 3 (Bankr. D.S.C. May 22, 2002) (citing cases). "Once the requirements of the first prong have been met, the moving party must then satisfy one of the

⁵ Applicable to the Motions filed by Ford and the Liquidating Trustee.

grounds six grounds for relief as set forth in Rule 60(b).” Id. As previously referenced, the parties agreed that new evidence should be presented and considered by the Court, and further took similar positions that the Court should reconsider the severance award portion of the April 6, 2005 Order. Therefore, based upon the posture of the hearing and the agreement of the parties, the Court need not separately address each element of Rule 60.

The burdens of proof with respect to claims allowance litigation are applicable inasmuch as the Court is in effect reconsidering Ford’s severance claim and determining whether to allow Kizer’s severance claim. “The Bankruptcy Code establishes a burden-shifting framework for providing the amount and validity of a claim.” Stancill v. Harford Sands Inc. (In re Harford Sands Inc.), 372 F.3d 637, 640 (4th Cir. 2004). Under Fed. R. Bankr. P. 3001(f), “[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). Therefore, a properly filed proof of claim is entitled to a presumption of prima facie validity, and the party objecting to the proof of claim bears the initial burden of producing evidence to defeat the claim. In re Dunes Hotel Assocs., 194 B.R. 994, 998 (Bankr. D.S.C. 1995) (citing cases). “If the debtor carries its burden, the creditor has the ultimate burden of proving the amount and validity of the claim by a preponderance of the evidence.” In re Harford Sands Inc., 372 F.3d at 640.

II. FORD’S MOTION TO ALTER

The new evidence presented by both Debtor and Ford have developed a clearer factual record in determining whether Debtor maintained the severance program utilized by its predecessor, GSC. Under the terms of the asset purchase agreement between Debtor and GSC, it is clear that Debtor only assumed and intended to continue certain employee

benefits described therein. This reconciles with the testimony of White and Shelley, officers of Debtor, which demonstrates that Debtor had no intention of adopting and continuing GSC's severance program.

Ford cites to certain provisions of the asset purchase agreement between Debtor and GSC in support of his Motion to Alter. Ford cites to section 5.17(a) of the asset purchase agreement between Debtor and GSC to demonstrate that Debtor was required to consider an employees' prior years of service with GSC when calculating and providing any type of benefits. Section 5.17(a) of the asset purchase agreement, in pertinent part, provides as follows:

[Debtor] agrees that Transferred Employees service with [GSC] . . . as shown on the records of GSC as of the Closing Date, shall be credited in determining eligibility and vesting under any employee benefit plans, programs, policies or arrangements covering such Transferred Employees established, continued, or otherwise sponsored by [Debtor] or any of its Affiliates after the Closing Date.

However, section 5.17(a) of the asset purchase agreement does not expressly establish that Debtor adopted or intended to continue GSC's severance program after it purchased the Steel Mill from GSC, and it must construed in conjunction with other portions of the asset purchase agreement. Section 5.17(c), when read with the related disclosure schedule (Section 5.17), expressly indicate that the only severance benefit that Debtor adopted from GSC was an Executive Severance Agreement dated April 6, 2000, between GSC and Robert L. Hacker. Since other employees are not listed, it appears that Debtor did not intend to adopt or continue the employee severance program for other employees that would give rise to Ford's claim. Additionally, it does not appear to have been the intent of the parties for

this provision of the asset purchase agreement to govern claims of general employees by providing them standing to enforce the agreement:

No person (other than the parties to this Agreement and members of the GSI Group), including without limitation *Transferred Employees, former employees of GSC, and their spouses and beneficiaries*, shall be entitled to assert any claim based on any provisions of this Section against any party to this Agreement. . . .

Section 5.17(f) (emphasis added). Finally, Ford submitted as evidence a document from Debtor's management that specifically delineated treatment of benefit obligations during the course of Debtor's bankruptcy. Noticeably absent is any reference to severance benefits.

Accordingly, Ford has failed to present any new evidence or grounds requiring the Court to depart from its earlier findings regarding whether Ford is entitled to severance payments for the years he was employed by Debtor's predecessor as calculated in the April 6, 2005 Order. Under the newly developed facts of this case, Ford has failed to carry his burden and does not appear entitled to the relief he requested in his Motion to Alter.

III. KIZER'S SEVERANCE CLAIM

In light of the new evidence presented, it also appears that the Liquidating Trustee for Debtor has presented sufficient evidence to rebut Kizer's severance claim. During the hearing on the Liquidating Trustee's Fifth Omnibus Objection, Kizer testified that Debtor had a long-standing practice of providing severance pay to laid-off employees, and that the calculation of such pay was based upon an employee's combined years of service to Debtor, GSC and any other predecessors in interest to the Steel Mill. However, since Kizer did not present any other evidence beyond the documents and assertions provided by Ford, the Court concludes that Kizer failed to present sufficient evidence to convince the Court that he

is entitled to the severance claim that Debtor seeks to disallow in the Fifth Omnibus Objection.

IV. LIQUIDATING TRUSTEE'S MOTION TO RECONSIDER

A. Reconsideration of Severance Benefits under Contract Implied in Fact

In the April 6, 2005 Order, the Court provided as follows:

Under state law, severance benefits may be implied by Debtor's conduct under the principles of an implied contract in fact. In South Carolina, an employee bears the burden of proving the elements of an alleged employee contract, which are (1) a specific offer; (2) communication of the offer to the employee; and (3) performance of job duties in reliance of the offer. Prescott v. Farmers Telephone Cooperative, Inc., 335 S.C. 330, 336, 516 S.E.2d 923, 926 (1999). Accord Storms v. Goodyear Tire & Rubber Co., 775 F. Supp. 862, 866 (D.S.C. 1991) ("Regardless of whether the contract is alleged to be express or implied, there must be proof of mutual assent and valid consideration. Mutual assent is a meeting of the minds evidenced by an offer and acceptance to all essential terms of the contract. [Employee] must present evidence of each essential element of the alleged contract.") (internal citations omitted).

Under the facts presented to the Court when the Court issued the April 6, 2005 Order, the Court concluded, "Debtor was obligated to provide severance benefits to Ford under an implied contract in fact." However, in light of the new evidence entered into the record of this case, it is clear that Debtor had no intention of continuing or assuming GSC's severance program as to general employees. Therefore, the lack of Debtor's mutual assent to provide Ford and other employees with benefits under GSC's severance program leads the Court to conclude that Debtor was not obligated to pay severance to Ford or Kizer.

In the April 6, 2005 Order, the Court noted, "Ford's testimony that Debtor formally communicated to employees the continuation of the GSC severance policy in staff meetings is undisputed." However, during the hearing reconsidering the April 6, 2005 Order, the Liquidating Trustee presented a sufficient amount of evidence disputing Ford's testimony

that Debtor assumed GSC's severance program. First, Debtor noted that the terms of the asset purchase agreement between Debtor and GSC does not expressly list GSC's severance program as a liability that Debtor assumed. Furthermore, Debtor noted that although White stated that he believed that Debtor should have paid employees laid-off after June 2003 some amount of severance during direct examination at a March 17, 2005 hearing, on cross-examination, White clearly stated that Debtor had no legal obligation to pay severance to employees. In addition to White's testimony, Shelley, the Debtor's chief executive officer, testified that Debtor did not maintain a severance program or adopt and continue the severance program utilized by GSC.

Debtor also presented evidence clarifying what White referred to when he advised employees that benefits they received from GSC remained intact while employed by Debtor. In the asset purchase agreement between GSC and Debtor, the attached schedules list a number of specific benefits that Debtor assumed. In Section 1.4 of the asset purchase agreement's disclosure schedules, the following employee benefits are listed: (1) GSC Union Employees' Pension Plan; GSC DRI Facility Union Employee's Pension Plan; (3) GSC Union Employees' Retirement Savings Plan; (4) GS Industries, Inc. Employee Pension Plan; (5) GS Industries, Inc. Retirement Savings Plan with some limitations; (6) GSC Union Employees' Group Medical Plan (Plan #501); GSC Flexible Benefits Plan (Plan #507); (7) GSC Union Employees' Post-Retirement Benefit Plan; (8) GS Industries, Inc. Group Insurance Plan (Plan #501); and GS Industries, Inc. Travel Accident Plain (Plan #502). Such benefits appear to be the only employee benefit obligations assumed by Debtor. There is no mention of Debtor's explicit assumption of GSC's employee severance plan. In

addition, as previously noted, the document Ford received from management outlining retained employee benefits does not reference a severance plan or program.

Ford contends that the fact that Debtor continued GSC's policy of providing vacation pay despite the fact that it was not an expressly assumed employee benefit listed in the asset purchase agreement demonstrates that Debtor likewise implicitly assumed GSC's severance program. Moreover, Ford asserted that the document he submitted demonstrates that Debtor has a history of calculating prior service years with GSC when determining vacation pay. However, Debtor, through the testimony of Shelley, indicated that the calculation of vacation pay with prior years of service to GSC and other predecessors in interest to the Steel Mill was contemplated and accounted for as a working-capital consideration during the closing of the asset purchase agreement with GSC, and that Debtor did not make such an accommodation for GSC's severance program. Ford presented no evidence to rebut Debtor's evidence. Furthermore, the simple fact that Debtor provided vacation pay and considered prior years of service with GSC and other predecessors does not demonstrate that Debtor maintained a severance program calculated in a similar fashion. Accordingly, there is insufficient evidence demonstrating that Debtor was required to pay severance claims under an implied contract in fact. Therefore, Debtor is not obligated to pay severance to Ford or Kizer under the principle of contract implied in fact.

B. Reconsideration of Severance Benefits under Contract Implied in Law

In the April 6, 2005 Order, the Court noted as follows:

Under South Carolina law, an implied contract in law claim is valid upon a showing of (1) a benefit conferred by the plaintiff upon defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value. Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 341 S.C. 1, 8-9, 532 S.E.2d 868, 872 (2000) (citing to the

quantum meruit analysis expressed in Columbia Wholesale Co. v. Scudder May, N.V., 312 S.C. 259, 440 S.E.2d 129 (1994) and adopting such analysis as “the sole test for a quantum meruit/quasi-contract/implied by law claim.”).

In light of the limited evidentiary record in existence prior to the issuance of the April 6, 2005 Order, the Court found that “Ford provided Debtor with the benefit of his continued services in reliance on the continuation of compensation that included severance benefits upon the termination of this employment,” and concluded that Ford is alternatively entitled to severance benefits based upon principles of implied contract in law. However, upon reconsideration of this matter and in light of the new evidence presented, the Court believes that Debtor did not maintain a severance benefit plan under a contract implied in law.

After demonstrating that Debtor only intended to reference the benefits specifically adopted in the asset purchase agreement when it advised employees that Debtor would continue benefits following GSC’s sale of the Steel Mill to Debtor, it is clear that Debtor did not intend to continue GSC’s severance program. Moreover, the record of this case indicates that, following the sale of the Steel Mill to Debtor, retained employees of GSC received hourly wages and salaries and other benefits as compensation for their service to Debtor. Accordingly, Debtor provided consideration for the services that Ford and Kizer provided during their employment tenure with Debtor. Beyond the work that Ford and Kizer provided to Debtor, there is no evidence of any other additional benefits that merit severance pay from Debtor.

For instance, Inge Ebert, a former employee of the Debtor who did not receive a severance benefit, submitted a letter that Debtor provided to Jesse McCutcheon, one of Debtor’s former employees who received severance pay from Debtor. The letter indicated

that, pursuant to the terms of an agreement between McCutcheon and Debtor, Debtor provided McCutcheon severance pay in exchange for his waiver of any and all claims against Debtor. Therefore, it appears that those who received severance pay from Debtor were offered such a benefit in exchange for something more than loyalty or continued employment, namely, a release or waiver of claims against Debtor. Ford and Kizer did not receive severance and did not make such an accommodation at the time of their termination; therefore, they are not entitled to be treated in a similar fashion as those who received a severance benefit in exchange for a release or waiver of claims.

Ford and Kizer collectively contend that their years of loyal service to Debtor demonstrate the additional consideration that warrants a finding of a severance plan implied at law. They also note that Debtor provided severance pay, which Debtor calculated by considering prior years of service to Debtor's predecessors in interest to the Steel Mill, to employees laid-off by Debtor before June 2003. However, such assertions do not sufficiently prove that Debtor maintained a severance plan under an implied contract at law theory because Ford and Kizer received consideration, in the form of paid wages and other benefits, such as health insurance, when they worked for Debtor. Moreover, Ford and Kizer failed to present sufficient evidence demonstrating that they had forgone new employment opportunities because they relied on Debtor to provide them with severance pay in the event that Debtor discontinued their employment. The payment of severance to some employees did not bind the Debtor to offer a similar benefit to other employees since the authority to provide such compensation may be based upon the sound business judgment and discretion of Debtor's management. Therefore, Ford and Kizer have failed to carry their burden of

proof in demonstrating that Debtor was legally obligated to provide them with a severance payment under an implied contract in law.

C. Priority and Administrative Expense Treatment of Claims

Ford contends that his severance claim is entitled to administrative priority treatment, and Kizer contends that his severance claim is entitled to priority treatment. However, since the Court now concludes that Ford and Kizer are not entitled to a severance claim based upon the foregoing reconsideration of the April 6, 2005 Order, the Court need not address Ford's demand for administrative priority treatment of his severance claim and Kizer's demand for priority treatment of his severance claim. Furthermore, since Debtor discontinued Kizer's employment prior to the ninety (90) day period before Debtor filed its bankruptcy petition, Kizer's severance claim is not entitled to priority treatment under 11 U.S.C. § 507(a)(3).

V. CONCLUSION

In light of the foregoing, the Court concludes that Debtor did not maintain a severance program that required it to provide severance benefits to Ford and Kizer. Thus, the Liquidating Trustee's Motion to Reconsider is granted and the Court concludes that Debtor was not legally obligated to provide severance benefits through a contract implied in fact or contract implied in law. Therefore, Ford's severance claim is disallowed in its entirety and the Court vacates the provisions of the April 6, 2005 Order allowing such a claim and providing administrative priority treatment for Ford's severance claim. Additionally, the Liquidating Trustee's objection to Kizer's severance claim under the Fifth Omnibus Objection is sustained. The vast majority of employees have either settled their claims with the Liquidating Trustee or are bound by prior Orders of the Court that were not

appealed, and the Liquidating Trustee has indicated that he will not review settlements that have already been reached with the employees. Thus, it appears that most employees' claims were resolved to their satisfaction and have been fully adjudicated. Accordingly, this Order affects solely the remaining employee claims of Ford and Kizer.

AND IT IS SO ORDERED.

Columbia, South Carolina

July 8, 2005


UNITED STATES BANKRUPTCY JUDGE